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SMITH'S FOOD & DRUG CENTERS, INC.

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

OSCAR POLIDORO,

Plaintiff,

vs.

SMITH'S FOOD & DRUG CENTERS, INC.,  
a foreign corporation; and DOES I-V and ROE  
CORPORATIONS I-V,

Defendants.

Case No.

**NOTICE OF REMOVAL**

Defendant, SMITH'S FOOD & DRUG CENTERS, INC. ("SMITH'S") hereby gives notice of its removal of Case No. A-21-841568-C from the Eighth Judicial District Court, Clark County, Nevada, to this Court. This Notice of Removal is filed pursuant to 28 U.S.C. §§1441(a) and 1446. As grounds for removal, SMITH'S states as follows:

**I.**

**NOTICE OF REMOVAL IS TIMELY**

1. On September 23, 2021, Plaintiff OSCAR POLIDORO, filed this lawsuit against SMITH'S. Pursuant to 28 U.S.C. §1446(a), a complete copy of the state court file, including the Complaint and process, is attached hereto as Exhibit "A".

2. SMITH'S was served with process on or about October 15, 2021. SMITH'S hereby reserves any and all rights and defenses to Plaintiff's Complaint.

3. The Complaint filed and served on SMITH'S merely alleged "That by reason of the premises and as a direct and proximate result thereof, Plaintiff, OSCAR POLIDORO, sustained

1 injuries to his neck, back, right wrist, nose and right shoulder requiring surgical repair, all or some of  
 2 which conditions may be permanent and disabling in nature, all to his general damage in a sum in  
 3 excess of \$15,000.00.” (Compl. ¶IX). In addition, Plaintiff has also alleged “That by reason of  
 4 the premises and as a direct result of the aforementioned negligence of the Defendant, and  
 5 each of them, Plaintiff, OSCAR POLIDORO, was required to and did receive medical and  
 6 other treatment for his injuries received in an expense all to his damage in a sum in excess of  
 7 \$15,000.00.” (Compl. ¶X).

8 4. Defense counsel learned that the value of this case was sufficient for Federal  
 9 jurisdiction on December 6, 2021. On that date, Plaintiff served his Initial Early Case Conference  
 10 Disclosures. A copy of said disclosure is attached hereto as Exhibit “B”. Therein, Plaintiff indicated  
 11 that he places a value of his general damages in an amount in excess of \$75,000.00.

12 Upon receiving this information, Defense counsel learned that the “amount in controversy”  
 13 exceeds the jurisdictional minimum for diversity jurisdiction.

14 5. This Notice of Removal is timely filed under 28 U.S.C. §1446(b), which provides:

15 If the case stated by the initial pleading is not removable, a notice of  
 16 removal may be filed within thirty days after receipt by the defendant,  
 17 through service or otherwise, of a copy of an amended pleading,  
 18 motion, order or other paper from which it may first be ascertained  
 19 that the case is one which is or has become removable, except that a  
 case may not be removed on the basis of jurisdiction conferred by  
 section 1332 of this title more than 1 year after commencement of the  
 action.

20 6. The following pleadings have been entered and/or filed in State Court:

- 21 a. Plaintiff’s Complaint filed September 23, 2021;
- 22 b. Proof of Service of Summons and Complaint filed November 4, 2021;
- 23 c. SMITH’S Answer to Plaintiff’s Complaint filed November 4, 2021;
- 24 d. Plaintiff’s Petition for Exemption from Arbitration was served on  
 25 November 9, 2021; and
- 26 e. Commissioner’s Decision on Request for Exemption was served on  
 27 November 23, 2021.

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7. Other than the pleadings discussed above, no further proceedings have taken place in District Court, Clark County, Nevada as of the filing of this notice of removal.

**II.**

**DIVERSITY JURISDICTION EXISTS**

8. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332. This action may be removed pursuant to 28 U.S.C. §1441, because the amount in controversy exceeds \$75,000, exclusive of interest and costs; the suit involves a controversy between citizens of different states; and none of the properly joined defendants is a citizen of Nevada.

**A. The Amount in Controversy Requirement is Satisfied.**

9. Plaintiff's Initial Early Case Conference Disclosures indicate that Plaintiff places a value of his general damages in an amount in excess of \$75,000.00.

**B. The Parties Are Diverse.**

10. The diversity of citizenship requirement is satisfied. SMITH'S is informed and believes that Plaintiff was at the time of his Complaint a citizen and resident of the State of Nevada. (*See* Compl. ¶I) .

11. SMITH'S was at the time of the filing of Plaintiff's Complaint and is now an Ohio Corporation with its principal place of business in the State of Utah.

**III.**

**REMOVAL TO THIS JURISDICTION IS PROPER**

12. Pursuant to 28 U.S.C. §§1332, 1441, and 1446, removal of the above-captioned state court action to this Court is appropriate.

13. Pursuant to 28 U.S.C. §1441(a), removal is made to this Court as the district and division embracing the place where the state action is pending 28 U.S.C. §108.

14. SMITH'S reserves the right to amend or supplement this Notice of Removal.

15. SMITH'S reserves all defenses, including, without limitation, the defense of lack of personal jurisdiction.

16. SMITH'S requests a trial by jury of all issues.

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Dated this 7th day of December, 2021.

Bv /s/ Jerry S. Busby  
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 SMITH'S FOOD & DRUG CENTERS, INC.